

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 138

SPONSOR: Criminal Justice Committee and Senator Lynn

SUBJECT: Cargo Theft/Criminal Punishment Code

DATE: November 20, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The Committee Substitute for Senate Bill 138 amends the offense ranking chart of the Criminal Punishment Code to raise from Level 6 to Level 7 the offense of cargo theft where the property stolen is valued at less than \$50,000, and to raise from Level 7 to Level 8 the offense of cargo theft where the property stolen is valued at \$50,000 or more.

The CS also makes it a second degree felony to modify, alter, attempt to alter, and if altered, sell, possess, offer to sell, move, or cause to be moved on the state highways a device known as a “fifth wheel” with the intent to commit or attempt to commit theft. This offense applies only to a fifth wheel on a heavy commercial motor vehicle.

The CS also provides that a person driving or in charge of a semitrailer may not permit it to stand unattended without complying with certain requirements (stopping vehicle engine, locking ignition, removing key, etc.). If the semitrailer is disconnected and left unattended and free of the truck tractor, a kingpin locking device must be attached to the trailer’s kingpin. A kingpin locking device must be attached to any semitrailer not attached to a truck tractor and left unattended on public or private property where the public is an invitee. Violation of this requirement is a noncriminal traffic infraction.

The CS also requires, with some exceptions, that a driver or other person responsible for a semitrailer used in commerce, who allows the semitrailer to be parked unattended without being attached to a motor vehicle, ensure that the semitrailer is secured by a locking device that prohibits unauthorized movement of the semitrailer.

This CS reenacts s. 812.014(1) and (2), F.S.; creates ss. 316.526 and 812.0147, F.S., and substantially amends ss. 316.1975 and 921.0022, F.S.

## II. Present Situation:

Section 812.014(1), F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

- (a) deprive the other person of a right to the property or a benefit from the property.
- (b) appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

Section 812.014(2)(a)2., F.S., provides that if a person steals cargo valued at \$50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock, that person commits grand theft in the first degree, a first degree felony. This offense is ranked in Level 7 of the offense severity ranking chart of the Criminal Punishment Code.

Section 812.014(2)(b)2., F.S., provides that if a person steals cargo valued at less than \$50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock, that person commits grand theft in the second degree, a second degree felony. This offense is ranked in Level 6 of the offense severity ranking chart of the Criminal Punishment Code.

Section 316.1975(1), F.S., provides that a person driving or in charge of any motor vehicle is not permitted to leave the vehicle unattended without first stopping the engine, locking the ignition, and removing the key. An unattended vehicle cannot be left on a perceptible grade without stopping the engine and effectively setting the brakes and turning the front wheel to the curb or side of the street. Violation of these requirements is a noncriminal traffic infraction.

## III. Effect of Proposed Changes:

The Committee Substitute for Senate Bill 138 amends s. 921.0022, F.S., the offense ranking chart of the Criminal Punishment Code, to raise from Level 6 to Level 7 the offense of cargo theft where the property stolen is valued at less than \$50,000. This change would make the lowest permissible sentence scored a prison sentence, absent mitigation.

The CS also raises from Level 7 to Level 8 the offense of cargo theft where the property stolen is valued at \$50,000 or more. This change would increase the lowest permissible sentence scored (currently a prison sentence), which will increase the length of the prison sentence.

The CS also makes conforming changes to the Code ranking chart consistent with the amendment, and reenacts the relevant provisions of the theft statute relating to cargo theft.

The CS also creates s. 812.0147, F.S., which makes it a second degree felony to modify, alter, attempt to alter, and if altered, sell, possess, offer to sell, move, or cause to be moved on the state highways a device known as a "fifth wheel" with the intent to commit or attempt to commit theft. The amendment also changes the subject of the bill from "cargo theft" to "theft."

The term “fifth wheel” is not defined in the CS but appears in several current laws in which it is also undefined. It appears that “fifth wheel” is a commonly understood term in the trucking industry. American Heritage Dictionary defines a “fifth wheel” as “1a. A wheel or portion of a wheel placed horizontally over the forward axle of a carriage to provide support and stability during turns. b. A similar device over the rear axle or axles of a tractor or pickup truck, serving as a coupling for a semitrailer.” The CS limits the application of this term to a fifth wheel on a heavy commercial motor vehicle.

The CS also amends s. 316.1975, F.S., to provide that a person driving or in charge of a semitrailer may not permit it to stand unattended without complying with the requirements of subsection (1) of the statute (stopping vehicle engine, locking ignition, removing key, etc.). If the semitrailer is disconnected and left unattended and free of a truck tractor, a kingpin locking device must be attached to the trailer’s kingpin. The term “kingpin locking device” is defined as a device designed to slide and lock over the semitrailer’s kingpin to prevent the trailer from being connected to the fifth wheel of a truck tractor. A kingpin locking device must be attached to any semitrailer not attached to a truck tractor and left unattended on public or private property where the public is an invitee. Violation of this requirement is a noncriminal traffic infraction.

The CS also creates s. 316.526, F.S., which provides that a driver or other person responsible for a semitrailer used in commerce, who allows the semitrailer to be parked unattended without being attached to a motor vehicle, ensure that the semitrailer is secured by a locking device that prohibits unauthorized movement of the semitrailer. If the unattended semitrailer is found without the required locking device, it may be towed to a secure facility by a commercial towing service at the direction of a law enforcement officer. The owner or carrier is responsible for reasonable towing fees, not to exceed \$300, incurred to tow and secure the vehicle for a period not exceeding 24 hours. There are four exceptions to the statute: semitrailers used to transport agricultural or forestry products when parked at a harvest site; semitrailers parked at a terminal; semitrailers displayed for sale, lease, or rent by a licensed dealer; and semitrailers that are empty.

The CS takes effect July 1, 2004.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The CS should have a positive impact on the private sector to the extent that the changes to the Criminal Punishment Code proposed by the CS deter cargo theft.

It is uncertain what impact, if any, the requirements for locking devices will have on the trucking industry.

**C. Government Sector Impact:**

The provisions of the CS that increase the rankings for cargo theft offenses are substantively identical to SB 2336, a bill filed by Senator Lynn in the 2003 Legislative Session. The Criminal Justice Impact Conference (the CJIC) estimated that SB 2336 was likely to have an insignificant prison bed impact. The CJIC has not yet met to consider CS/SB 138, so an official estimate is not presently available. A preliminary review of the ranking changes by staff of the Economic and Demographic Division (EDR) indicates that, according to the Criminal Code database, no offenders were sentenced for the current Level 6 offense (cargo valued at less than \$50,000) during FY 02-03. There were 106 offenders sentenced for the current Level 7 offense that includes cargo valued at \$50,000 or more but the same offense code is used for property stolen valued at \$100,000 or more so there is no way to know if any of the 106 had cargo offenses. Based on this information, it appears probable that CS/SB 138 will have an insignificant prison bed impact.

Neither EDR nor CJIC have yet reviewed the proposed second degree felony in s. 812.0147, F.S., a new section the CS creates. The offense is not ranked in the Code ranking chart, so it defaults to level 4. For a first-time offender with no additional offenses, the lowest permissible sentence would be a nonprison sanction. The sentencing range would be a nonprison sanction up to 15-years imprisonment.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Statistics are not compiled on cargo theft crimes by any federal agency because there is presently no uniform crime reporting code for cargo theft.

A "snapshot" of the cargo theft problem in Florida can be obtained from statistics provided to staff by the Florida Statewide Cargo Theft Task Force. These statistics are based on instances of cargo theft reported by law enforcement agencies, the insurance industry, and the trucking

industry to the Florida Highway Patrol via that agency’s FAX Alert system. The following cargo theft alerts were received and estimated losses reported for the years 2001-2003:

**CARGO THEFT ALERTS AND LOSSES REPORTED (2001-2003)**

<b>2001</b>	<b>2002</b>	<b>2003</b>
389 Alerts	359 Alerts	190 Alerts
Commercial vehicle loss: \$17.6 million	Commercial vehicle loss: \$14.4 million	Commercial vehicle loss: \$9.9 million
Cargo loss: \$18.2 million	Cargo loss: \$21.2 million	Cargo loss: \$9.3 million
Total property loss: \$35.8 million	Total property loss: \$35.6 million	Total property loss: \$19.2 million
Average property loss: \$92,098	Average property loss: \$99,195	Average property loss: \$101,198

Property loss estimates provided are conservative estimates and are based only on those instances reported to the Highway Patrol. Cargo theft is underreported. Some trucking companies do not report cargo theft losses because of fears that losses will increase their insurance or they may lose business.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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